

REMARKS/ARGUMENTS

In view of the following remarks, reexamination and reconsideration of this application, withdrawal of the rejections, and formal notification of the allowability of all claims as presented are earnestly solicited. In response to the Office Action, Applicants respectfully present the following remarks to highlight the patentable subject matter of the pending claims. It is believed that the pending claims define patentable subject matter over the references cited by the Examiner and notice to such effect is requested at the Examiner's earliest convenience.

Claim Status

Claims 1-75 are pending. Claims 1, 19, 35, 46 and 47 have been amended. Support for the amendment can be found throughout the specification and drawings such as, for example, at page 15, line 6 through page 16, line 20. Thus, no new matter has been added.

Claim Rejections – 35 U.S.C. §103

Examiner has rejected Claims 1-75 under 35 U.S.C. §103(a) as being obvious over U.S. Patent No. 5,738,159 to O'Brien ("O'Brien") in view of U.S. Patent No. 3,487,875 to Shukat *et al.* ("Shukat"). In particular, Examiner has stated that O'Brien discloses the claim elements of Claim 1-75 except the "slats, or equivalent thereto, dowels." The Examiner further cites Figure 5 of Shukat and states that "it would have been obvious to modify O'Brien to have such slats so as to provide defined pleats." As listed above, Applicants have amended Claims 1, 19, 35, 46, and 47 in response to this rejection. Furthermore, Applicants respectfully submit that neither Shukat nor O'Brien provide the suggestion or motivation to modify O'Brien with the stiffening members of Shukat to obtain the claimed invention.

1. **O'Brien And Shukat, Alone Or In Combination, Do Not Teach Or Suggest The Claimed Invention.**

Amended independent claims 1, 19, 35, 46 and 57 (section iv) now require that the sleeve positioned at or near the top of the panel be adapted to enable the installation to be completed without collateral hardware. Neither O'Brien nor Shukat, alone or in combination,

disclose this limitation. Further, each of these claims have been amended to require that the claimed panel is suitable for installation onto any rod. This limitation is also not disclosed in either O'Brien or Shukat.

Conventional installation of raisable panels (e.g., window treatments) requires the use of tools and hardware. Such installation can be awkward, time-consuming and damaging to frames. It is also difficult to remove window coverings installed by traditional means. If the window treatment cannot be uninstalled or is damaged in the process, then it cannot be used again. *See* Specification page 15, lines 7-11.

The present invention may be easily installed on or uninstalled from any rod (e.g., conventional curtain rod) without the need of "collateral hardware" or special tools typically used for installing raisable panels. *See* Specification page 15, lines 12-15. This limitation is now explicitly recited in amended independent claims 1, 10, 35, 46 and 57 (at section (iv)). The specification defines "collateral hardware" as meaning those items ordinarily used to install prior art raisable panels, but is not required to install the present invention on a rod. *See* Specification page 15, lines 16-18. Items not required to install the present invention include, but are not limited to, back plates, hooks, wall fasteners, loop fasteners, screw eyes, mounting brackets, mounting boards, clamps, latching mechanism or any customized or specialty item for installing a window treatment. *See* Specification page 15, lines 16-20. In one embodiment, the present panel easily slides onto any conventional rod already in place. *See* Specification page 16, lines 5-6.

In contrast, the O'Brien window panel requires mounting a conventional curtain rod **82** and **84** through rod pocket **52** or upper hen **48** at the top of the window casing **86**. (See O'Brien, col. 6, lines 45-49). Other forms of installation include suspending a window drape from a pole, but O'Brien provides no indication as to whether the pole is installed using mounting brackets or mounting boards, for example. (See *id.*, col. 7, lines 19-41 and lines 60-62; see also Figures 2 and 15-20.) Also, O'Brien makes no mention as to whether the window panel may be installed onto any conventional rod previously mounted for another window panel. Shukat is directed to a self-operating drapery requiring an array of "collateral hardware" for installation. (See *e.g.*, col. 2, lines 59-62) ("Rotatably mounted by means of brackets *e.g.*, **27** and **28** between side walls **22**

and 23 of support means 20 is shade roller 30.”) Thus, the deficiencies of O’Brien are not cured by the disclosure of Shukat.

Unlike O’Brien and Shukat, the claimed invention can be suspended without attaching the raisable panel directly to a mounting board using “collateral hardware”, and then attaching the board to the inside or outside of a window frame using more collateral hardware. *See* Specification page 15, line 21 through page 16, line 3. In one preferred embodiment, the panel of the present invention may be installed by sliding it onto any conventional curtain rod without the use of “collateral hardware”. *See* Specification page 16, lines 2-3. The art of record discloses no embodiment having any substantial degree of interchangeability as that required by the claimed invention.

Further, unlike O’Brien and Shukat, the raisable panel of the claimed invention may be suspended on a traditional rod that was already installed for another panel, wherein the previous panel is completely different in terms of structure and shape relative to the claimed invention. *See* Specification page 16, lines 4-8. Here, the present invention may easily be slid onto any rod, as is now specified in the claims. Thus, there is no need to attach the present panel directly to a mounting board using hardware, and to mount the board to the inside of the window frame. *See* Specification page 16, lines 6-8. Ordinarily, the installation hardware for one window treatment is not suitable for another window treatment. *See* Specification page 15, lines 7-11. However, the present invention can be installed and suspended from any previously installed rod customarily used for other types of window treatments. Such interchangeability is not taught in either O’Brien or Shukat. Thus, the present invention provides the user with greater flexibility in installation as compared to O’Brien and Shukat.

2. There is No Suggestion or Motivation to Modify O’Brien With the Stiffening Members of Shukat to Obtain the Claimed Invention.

As described above, the Applicants respectfully submit that Shukat and O’Brien, alone or in combination, do not teach or suggest the recitations added to independent claims 1, 19, 35, 46 and 57. Furthermore, even if one were to properly combine Shukat and O’Brien, the Applicants

respectfully submit that there is no suggestion or motivation to modify O'Brien with the stiffening members of Shukat to obtain the claimed invention.

The Federal Circuit has consistently stated that a finding of obviousness requires a specific teaching, motivation, or suggestion to combine the teachings of individual items of prior art. See, e.g., *In Re Sang Su Lee*, No. 00-1158 (Fed. Cir. January 18, 2002) (factual question of motivation to combine is material to patentability and could not be resolved on subjective belief and unknown authority); *C.R. Bard, Inc. v. M3 Systems*, Inc., 157 F.3d 1340, 1352 (Fed. Cir. 1998) (a showing of a suggestion, teaching, or motivation to combine is an essential evidentiary component of an obviousness holding); *In re Fritch*, 972 F.2d 1260, 1265 (Fed. Cir. 1992) (Examiner can satisfy burden of obviousness in light of combination only by showing some objective teaching leading to the combination); and *In re Fine*, 837 F.2d 1071, 1075 (Fed. Cir. 1988) (evidence of teaching or suggestion essential to avoid hindsight).

Instead of providing a motivation to combine the teachings of O'Brien and Shukat, O'Brien instead teaches away from including slats or “stiffening members” in the disclosed window drape, since O'Brien discloses a “window drape capable of being selectively arranged to achieve different styles” (see O'Brien, column 1, lines 53-54). More particularly, the window shade disclosed in O'Brien is disclosed as being capable of forming an “Austrian style drape” wherein the face panel is adjusted to “be gathered upwardly.” See O'Brien, column 6, lines 43-63 and Figure 12. Furthermore, the window drape of O'Brien is further disclosed as being capable of forming a “balloon shade” wherein the lower end of the face panel is “gathered upwardly into a gently scalloped, billowing shape as shown in FIG. 14.” See O'Brien, column 7, lines 1-11 and Figure 14. The slats or “stiffening members” (52, 54) disclosed generally by Shukat; in contrast, serve “to prevent curling and wrinkling of the sheet member.” See Shukat, column 3, lines 53-54 (emphasis added). Thus, the slats or “stiffening members” disclosed by Shukat, would prevent the “upward gathering” and “scalloped, billowing shapes” or other “curling and wrinkling” shown in Figures 12 and 14 of O'Brien, if added to the window drape of O'Brien.

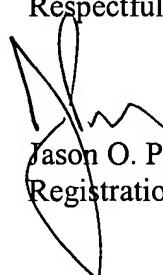
Applicants also note that the Federal Circuit has held that “if the proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then

there is no suggestion or motivation to make the proposed modification.” *See* MPEP §2143.01, citing *In re Gordon*, 733 F.2d 900, 221 U.S.P.Q. 1125 (Fed. Cir. 1984). O’Brien states that “it is a primary object of the present invention... to provide a window drape capable of being selectively arranged to achieve different styles.” *See* O’Brien, column 1, lines 51-54. Applicants respectfully submit that modification of the window drape of O’Brien with the addition of straight “stiffening members” (as generally disclosed in Shukat) would render the O’Brien window drape unsatisfactory for achieving different styles (such as the gathered, scalloped, and billowing styles disclosed in O’Brien with respect to Figures 12 and 14). Thus, Applicants respectfully submit that there is no suggestion or motivation to modify the O’Brien window shade with the addition of the slats generally disclosed in Shukat.

CONCLUSION

In conclusion, O’Brien or Shukat, alone or in combination do not teach, suggest, or provide motivation for the claimed invention. Accordingly, in view of the above differences between the Applicants’ invention and the cited reference, Applicants submit that the present invention, as defined by the pending claims, is patentable over the references cited in the Office Action. As such, for the reasons set forth above, Claims 1-75 are believed to be in condition for immediate allowance and notice to such effect is respectfully requested at the Examiner’s earliest opportunity.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,

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